

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 8:050. Drinking water program fees.

RELATES TO: KRS 223.220, 224.10-100, 224.10-110, 40 C.F.R. 142.10, Pub. L. 104-182, EO 2008-507, 2008-531 [KRS Chapter 224]

STATUTORY AUTHORITY: KRS [~~Chapter~~] 223.220, 224.10-100(20), 224.10-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224.10-100(20) authorizes [~~permits~~] the cabinet to establish, by administrative regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. [~~The purpose of~~] This administrative regulation establishes fees [~~is to establish a fee structure~~] for reviewing plans and specifications of public water systems, for operator certification, and for laboratory certification.

Section 1. [~~Fees.~~] Fees for the review of plans and specifications for new and existing public and semipublic water systems.

(1) Filing fees.

(a) Except as provided in KRS 224.10-100, a [~~any~~] person who submits the plans and specifications listed in subsection (2) of this section shall simultaneously submit a filing fee in the amount of twenty (20) percent of the required project fee described in subsection (2) of this

1 section.

2 (b) A filing fee shall not be ~~[is not]~~ refundable if the plans and specifications for ~~[to]~~ which
3 the filing fee is required ~~[related]~~ are denied or withdrawn.

4 (c) The filing fee shall ~~[will]~~ be applied toward the project fee assessed in subsection (2) of
5 this section.

6 (d) 1. Plans and specifications not approved shall ~~[denied approval by the cabinet will]~~ be
7 returned to the applicant.

8 2. Further consideration of ~~[such]~~ plans and specifications not approved shall ~~[will]~~ require
9 a new submittal and payment of the ~~[with]~~ appropriate filing fee [fee(s)].

10 (2) Project fees.

11 (a) Following preliminary review of the plans and specifications, the cabinet shall notify the
12 applicant whether ~~[will be notified if]~~ the plans and specifications comply with 401 KAR 8:100.
13 ~~[are acceptable]~~ If the applicant is notified that the plans and specifications comply, the applicant
14 ~~[and]~~ shall submit the remainder of the fee ~~[fee(s)]~~ required by paragraph (b) of this subsection.

15 (b) A fee ~~[Fees]~~ for review and approval of the plans and specifications shall ~~[will]~~ be
16 assessed according to the following schedule:

17 1. Fees for reviewing plans of community ~~[Community]~~ public water systems.

18 a. The fee for reviewing plans for a water treatment plant utilizing disinfection and all
19 components of conventional filtration treatment shall be \$800. ~~[coagulation, disinfection,~~
20 ~~filtration, and sedimentation (all treatment components, complete treatment) - \$800.]~~ .

21 b. The fee for reviewing plans for a water treatment plant utilizing disinfection, but not all
22 components of conventional filtration treatment, shall be \$525. ~~[at least disinfection and other~~
23 ~~treatment component(s), but less than complete treatment \$525.]~~

c. The fee for reviewing plans for a water treatment plant utilizing only disinfection shall be
[-] \$250.

d. The fee for reviewing plans for a change in design capacity of a water treatment plant
involving disinfection and all components of conventional filtration treatment shall be \$800.
~~[coagulation, disinfection, filtration, and sedimentation (all treatment components, complete~~
~~treatment)—\$800.]~~

e. The fee for reviewing plans for a change in design capacity of a water treatment plant
involving disinfection, but not all components of conventional filtration treatment, shall be \$525.
~~[and other treatment component(s), but less than complete treatment —\$525.]~~

f. The fee for reviewing plans for a change in design capacity of a water treatment plant
involving only disinfection shall be [-] \$125.

g. The fee for reviewing plans for a change ~~[, other than to a water treatment plant,]~~ in the
structures and appurtenances of a water supply system, other than a water treatment plant, and
except for distribution lines of less than 10,000 feet, shall be ~~[of a water supply system—]~~ \$325.

h. The fee for reviewing plans of a water supply system for a change to the distribution lines
of 10,000 feet or less shall be ~~[of a water supply system —]~~ \$150.

2. Fees for reviewing plans of noncommunity public water systems.

a. The fee for reviewing plans for a water treatment plant utilizing disinfection and all
components of conventional filtration treatment shall be \$800 ~~[coagulation, disinfection,~~
~~filtration, and sedimentation (all treatment components, complete treatment)—\$800.]~~

b. The fee for reviewing plans for a water supply system serving more than 100 people that
utilizes disinfection, but not all components of conventional filtration treatment, shall be \$200.
~~[but not providing complete treatment —\$200.]~~

c. The fee for reviewing plans for a change to a water supply system serving more than 100 people shall be [.-] \$100.

d. The fee for reviewing plans for a water supply system serving 100 people or fewer, which utilizes disinfection, but not all components of conventional filtration treatment, shall be \$100. [less, but not providing complete treatment—\$100.]

e. The fee for reviewing plans for a change to a water supply system serving 100 people or fewer shall be [less—] fifty (50) dollars.

3. Semipublic water systems. The fee for reviewing plans for a semipublic water system facility or a change to a semipublic water system shall be [-] fifty (50) dollars.

Section 2. Fees for Laboratory Certification [~~shall be paid on an annual basis~~].

(1) Fees shall be received by February 15 of each calendar year.

(2) A fee received after February 15 and before March 14 shall incur a surcharge of fifteen (15) percent.

(3) Laboratory certification shall be revoked if fees are not received by March 15.

(4) To reinstate a laboratory certification that was revoked pursuant to subsection (3) of this section, the laboratory shall comply with 401 KAR 8:040, Section 2 and shall pay a surcharge of twenty-five (25) percent of the certification fee established in Table A in subsection (5) of this section.

(5) The annual fee for certification by analysis category shall be as established in Table A:

<u>Table A: Annual Certification Fee by Analysis Category</u>	
<u>Analysis Category</u>	<u>Fee</u>
<u>Microbiology Administration and Application</u>	<u>\$1,000</u>
<u>Microbiology</u>	<u>\$500</u>

<u>Chemistry Administration and Application</u>	<u>\$1,000</u>
<u>Disinfection By-Products</u>	<u>\$500</u>
<u>Synthetic Organic Chemicals</u>	<u>\$500</u>
<u>Volatile Organic Chemicals</u>	<u>\$500</u>
<u>All Other Chemical Analysis Categories</u>	<u>\$500</u>
<u>Other audits resulting in a certification status change</u>	<u>\$500 each</u>

(6) Fees shall apply to in-state and out-of-state laboratories.

(7)(a) A laboratory may request a ten (10) percent discount of the following year's certification fee if it submits compliance data electronically for one (1) calendar.

(b) To be eligible for the discount:

1. The laboratory's data shall not contain errors;

2. The laboratory shall not err in the electronic-submittal process; and

3. The laboratory shall comply with 401 KAR 8:040, Section 4.

(8) A laboratory certified by the National Environmental Laboratory Association Certification Institute (TNI) or a National Environmental Laboratory Association Program accrediting authority may request a ten (10) percent discount of the total certification fee for which it maintains the TNI certification.

~~[The three (3) contaminant groups for which certification is required and their respective fees are as follows:~~

~~(1) Bacteriological—\$250~~

~~(2) Inorganic—\$125~~

~~(3) Organic—\$125]~~

Section 3. (1) Fees for certification of water treatment plant and water distribution system

operators.

(a) Certification application fee shall be \$100.

(b) A renewal application fee shall be:

1. Fifty (50) dollars if renewed through the cabinet Web site; or

2. \$100 if not renewed through the cabinet Web site.

(c) A renewal late fee shall be \$250.

(d) A reciprocity fee shall be \$500.

(2) Each year the cabinet, in consultation with the board, shall establish fees for operator training conducted by the cabinet.

(3)(a) The fees established in subsection (1) of this section shall be nonrefundable.

(b) Fifty (50) percent of the fees established in subsection (2) of this section shall be refundable if registration is canceled at least two (2) business days prior to the beginning of the training event.

(c) The fees in subsection (2) of this section shall be fully refunded if the training event is cancelled by the cabinet.

~~[Fees for the certification of water plant operators shall be as follows:~~

~~(1) Fees for certification of water treatment plant and water distribution system applicants for Classes I through IV and the limited class shall not exceed the following:~~

~~(a) Initial examination: thirty five (35) dollars.~~

~~(b) Certification by reciprocity: thirty five (35) dollars.~~

~~(c) Reexamination for a new certificate or to make up for failure to pass an examination: thirty five (35) dollars for each reexamination.~~

~~(d) Reinstatement of a lapsed certificate: thirty five (35) dollars plus renewal fee.~~

1 ~~(e) Certificate renewal: thirty five (35) dollars per biennium.~~

2 ~~(2) Training. Fees for training sessions conducted by the cabinet shall not exceed five (5)~~
3 ~~dollars per contact hour.~~

4 ~~(3) Failing. Fees accompanying applications shall not be returned to those who fail to pass the~~
5 ~~examination.~~

6 ~~Section 4. Severability. If a [any] provision of this administrative regulation is set aside by a~~
7 ~~court of competent jurisdiction, the remainder of this administrative regulation remains in effect.]~~

401 KAR 8:050 “Fees” approved for promulgation:

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2009, at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Rooms 301B and 301C, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 8:050

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation establishes fees for reviewing plans and specifications of public water systems, for operator certification, and for laboratory certification.
- (b) The necessity of this administrative regulation:** The fees set out in this administrative regulation are designed to recover a portion of the costs for implementing these programs.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS Chapter 224.10-100(20) authorizes the cabinet to establish, by regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. KRS 223.160-223.220 and 224.10-110 authorize the cabinet to implement a certification program for drinking water system operators.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** In order to be effective, the laboratory certification and operator certification programs must be administered in a manner that meets the objective of the Safe Drinking Water Act and is acceptable to EPA. On-site laboratory audits are an integral part of the successful laboratory certification program, which has a real cost associated with the on-site audit.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** The amendments to this administrative regulation will increase fees for laboratory certification and water system operator certification to recover a higher percentage of the actual costs of those programs. The proposed amendment adds a surcharge for late payments. Additionally, penalties are added if payment is not received within 10 weeks of the due date.
- (b) The necessity of the amendment to this administrative regulation:** The amendments to this administrative regulation are designed to allow the cabinet to recover more of the actual costs of the operator certification program and the laboratory certification program. Without raising the fees, laboratory on-site audits may not be completed in a timely manner or may not meet the requirements of EPA. This would affect the quality of the laboratory certification program and jeopardize primacy. Additionally, failure to fully implement the laboratory certification program can reduce the reliability of compliance data for public water systems and negatively impact public health.
- (c) How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-100(20) authorizes the cabinet to establish a schedule of fees for the cost of processing permit applications. KRS 223.220 allows for fees to be established to implement the certification program.
- (d) How the amendment will assist in the effective administration of the statutes:** The amendments to this administrative regulation will allow the cabinet to recover more of the actual costs of the operator certification program and the laboratory certification program. The amendment will allow Kentucky to continue the laboratory certification program without sacrificing the quality of the program. The amendment, which increases fees and includes

payment deadlines, surcharges, and penalties will allow for a more effective management of the program. The training and testing of operators helps to ensure high quality drinking water for customers of public water systems and protects public health. Trained, tested, and certified operators extend the life of a water system through proper operation and maintenance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Certified drinking water treatment plant and distribution system operators, as well as operators seeking certification, will be affected by this amended administrative regulation. There are approximately 2,500 operators currently certified by the program. State or local governments that operate drinking water treatment plants or distribution systems will be affected by this amended administrative regulation if they pay the certification fees of their employees.

There are sixty-six laboratories certified in Kentucky and fifty-three certified laboratories outside the state. In Kentucky forty-three laboratories are certified for microbiology and twenty-three are certified for chemistry (19 microbiology and 4 chemistry laboratories are municipally owned). Outside Kentucky, there is one certified microbiology laboratory and fifty-two certified chemistry laboratories.

With these increased fees, Kentucky will be able to provide more efficient and consistent technical assistance to certified laboratories as well helping to defray the actual cost of the certification programs. This benefit extends to the general public by ensuring that drinking water analysis is done properly and is protective of public health.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified operators, certified laboratories, state and local governments, and operators seeking certification will refer to this amended administrative regulation to determine the necessary fees for obtaining and maintaining certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

For laboratory certification, the proposed fee increases depend on the number of analysis groups for which the laboratory wishes to be certified. For example, to be certified for one analytic category, the increase would be from \$250 per year to \$1,500 per year. To be certified for two categories, the increase would be from \$500 to \$2,000, with an additional \$500 per category. For operator certification, individuals will pay the following costs:

1. Certification fee - \$100
2. Renewal application fee - \$50 if renewed electronically; \$100 if not renewed electronically
3. Renewal late fee - \$250
4. Reciprocity fee - \$500

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): In order to conduct drinking water monitoring under the Safe Drinking Water Act, a laboratory must be certified. A public water system must be operated by a certified operator. This administrative regulation allows the cabinet to provide these services. A laboratory will receive a routine on-site audit, which will provide them with technical feedback and recommended corrective actions to improve or maintain the quality that is required for EPA's drinking water program. Certification by Kentucky for drinking water may be used by a laboratory to increase its business by obtaining in-state and out-of-state clients.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially:** The state is currently collecting a fee for operator and laboratory certifications. There is no additional cost to the state to implement this amendment other than mailing notification to all (currently 119) laboratories of the changes.
- (b) On a continuing basis:** No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?

The annual laboratory certification fees will supplement general funds used to administer and enforce the program. Penalties will provide additional monies for costs associated with late payments. The program currently operates at a loss and these amended fees will allow the cabinet to recover many of the costs associated with certifying laboratories. The costs and projected revenue are described in the tables below:

Projected Drinking Water Compliance and Technical Assistance Costs, CY 2009

Personnel Certification Program Costs per Year (3.1 FTEs)	\$219,465
Contractual Certification Program Cost per Year	\$85,000
Total Certification Program Cost per Year	\$304,465
Average Certification Program Cost per Hour	\$157

Certification Type	Actual Certification Costs	Proposed Certification Fee	Avg. No. of Certifications per Year	Total Certification Costs	Total Certification Revenue
(1) Chemistry					
<u>Sub-Type:</u>					
Application Fee	\$1,018	\$1,000	38	\$38,685	\$38,000
IOC/SEC/RADS	\$509	\$500	36	\$18,324	\$18,000
DBP	\$509	\$500	23	\$11,707	\$11,500
SOC	\$509	\$500	21	\$10,689	\$10,500
VOC	\$509	\$500	20	\$10,180	\$10,000
(2) Microbiology					
<u>Sub-Type:</u>					
Application Fee	\$1,018	\$1,000	43	\$43,775	\$43,000
TCR	\$509	\$500	43	\$21,887	\$21,500
				\$155,247	\$152,500

Operator certification revenues in the following table are based on two fiscal years. Drinking water certificates expire on June 30 of even-numbered years. Therefore, the renewal year would yield higher revenues and the non-renewal year would yield lower revenues. The annual operator fees will be used to administer and enforce the program.

Average Operator Certification Program Cost For Two (2) Years \$703,200

	Proposed Fee	Anticipated # of Submissions	Anticipated Revenue
Certification Fee	\$100	860	\$86,000
On-line Renewal Fee	\$50	2025	\$101,250
Paper Renewal Fee	\$100	475	\$47,500
Late Renewal Fee	\$250	250	\$62,500
Limited Fee	\$100	0	\$0
Reciprocity Fee	\$500	10	\$5,000
TOTAL			\$302,250

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

This amended administrative regulation establishes the fees associated with operator certification and laboratory certification. The fees are necessary to effectively implement the programs and to continue to provide the certification program's existing services.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

The amendment establishes new fees and increases fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes, tiering is applied.

Laboratory selection of discipline (chemistry or microbiology) and the number of categories will dictate the annual certification fee. A laboratory that analyzes more categories of contaminants will pay a higher annual certification fee. However, these laboratories will have the ability to increase their revenues throughout the year. Furthermore, this tiering would allow smaller labs, analyzing fewer categories, to pay lower annual certification fees, thus remaining competitive with their larger counterparts.

For operator certification, a certification application fee is set at a flat rate of \$100 for all applicants and is a one-time fee for each initial certification. Renewal fees are required every two years and are tiered based on the timeliness of the renewal application submittal. If the renewal application is received on or before the June 30 deadline, the fee is \$50 if renewed electronically on the agency's Web site and \$100 if not renewed electronically. If the renewal application is received after June 30 of the renewal year, a late fee will be assessed in the amount of \$250. A certified operator from another state may apply for a Kentucky certification through reciprocity. The reciprocity application fee is \$500. An individual can avoid the reciprocity application fee by qualifying for and passing the Kentucky certification exam.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 8:050

Contact Person: Sandy Gruzesky, Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This regulation applies to certified operators, and certified laboratories hired by public and semipublic water systems. A public water system sometimes has its own certified laboratory. A public water system often is owned by a city government or is organized under a county government. Other entities, such as associations, privately-owned or investor-owned entities, may have a water system.

The cabinet will benefit from the additional revenue generated from this regulation change by providing more efficient and consistent technical assistance to certified laboratories as well as helping to address cost overruns within the program.

The benefit also extends to the general public by ensuring that analyses are protective of public health.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100 and 224.10-110 authorize the cabinet to establish, by regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

These fees will increase revenues for the state.

Program	Current Program Costs	Current Revenue	Proposed Increase in Revenue	Total Expected Revenue
Lab Certification	\$304,465	\$18,750	\$133,750	\$152,500
Operator Certification*	\$703,200	\$166,500	\$175,550	\$342,050

*Operator Certification numbers are for 2-year cycles

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

For the laboratory certification program, the state currently receives approximately \$18,750 in fees per year. The estimated increase in revenue is \$133,750, annually, for laboratory certification and \$82,100 for operator certification.

(c) How much will it cost to administer this program for the first year?

The cabinet currently collects a fee for the certification programs. There is no additional cost to increase the fees proposed in this administrative regulation.

The cost to administer the laboratory certification program is approximately \$304,465 per year. Other administrative duties are coordinated within the compliance and technical assistance branch.

The cost to administer the operator certification program is approximately \$351,600 per year. A local government that operates a drinking water treatment plant or distribution system will incur a cost if it pays the certification fees of its employees. Public water systems are already required to have properly certified operators. These entities would incur an increase in expenses based upon the fee schedule listed below:

1. Certification fee: \$100
2. Renewal application fee: \$50 if renewed electronically; \$100 if not renewed electronically
3. Renewal late fee - \$250

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not introduce any additional costs. There is already a mechanism in place to collect fees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 8:050

Contact Person: Sandy Gruzesky, Assistant Director

1. Federal statute or regulation constituting the federal mandate.

There is no federal mandate for laboratory certification or operator certification fees, although 40 C.F.R. 142 does require these activities to occur as a condition of receiving primary enforcement responsibility for the Safe Drinking Water Act.

2. State compliance standards.

KRS 223.220, 224.10-100, 224.10-110

3. Minimum or uniform standards contained in the federal mandate.

40 CFR Part 141 and Part 142 establish National Primary Drinking Water Regulations and implementation standards for those regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

There is no federal mandate for laboratory or operator certification fees, although the federal requirements allow fees to be charged by the state certification program.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

KRS Chapter 224.10-100(20) authorizes the cabinet to establish, by regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by KRS Chapter 224. The cabinet uses fees to partially cover the cost of providing laboratory and operator certification programs for compliance with federal mandates. These certifications are necessary for laboratories and operators to do business.